

EXHIBIT 1

Archdiocese of New York Schools – FY2002 E-Rate Appeals

School Name	BEN	Date of Request For Review	Form 470	Form 471	FRN	COMAD Date	Original Funding Commitment	Funds Disbursed to Date	Disbursed Funds USAC Claims Should be Recovered from Service Provider/Applicant
All Saints Elementary School	10231	9/29/2010	217630000379068	302170	796448(IC) 796451(IA)	9/30/2008	\$14,196.60 \$2,250	\$0 \$0	\$0 \$0
Blessed Sacrament School	10008	9/28/2010	687200000379424	302187	796527(IC) 796528(IA) 796530(IC)	9/30/2008	\$62,994.60 \$13,500 \$18,846	\$29,541.60 \$9,720 \$0	\$29,541.60 \$9,720 \$0
Immaculate Conception School	10473	9/28/2010	790290000379426	295277	756725(IA) 756742(IC)	10/1/2008	\$13,500 \$39,801.60	\$12,960 \$39,801.60	\$12,960 \$39,801.60
Immaculate Conception G School	10691	9/28/2010	979820000379425	302191	796580(IC)	10/14/2008	\$39,531.60	\$36,855	\$36,855
Incarnation Elementary School	10184	9/28/2010	670910000379116	302176	796595(IC) 796598(IA)	9/30/2008	\$16,572.60 \$13,500	\$16,572.60 \$13,500	\$16,572.60 \$13,500
Mt. Carmel/Holy Rosary	10215	9/28/2010	850770000379429	302177	796612(IC) 796613(IA)	9/30/2008	\$15,066 \$13,500	\$15,066 \$9,720	\$15,066 \$9,720
Notre Dame High School	9883	9/28/2010	709820000379456	302179	796633(IA)		\$9,000	\$0	\$0
Our Lady Queen of Angels	10108	9/29/2010	487080000379129	302184	796682(IC) 796685(IA)	9/30/2008	\$10,746 \$15,120	\$10,746 \$9,720	\$10,746 \$9,720
Our Lady of Pompeii	9936	9/28/2010	349300000380184	303933	798527(IA)	10/1/2008	\$7,950	\$5,850	\$5,850
Resurrection School*	10239	9/28/2010	973670000379450	302192	796699(IC) 796703(IC) 796704(IA)	9/30/2008	\$22,950 \$2,124 \$13,500	\$22,950 \$2,124 \$9,720	\$22,950 \$2,124 \$9,720
Sacred Heart of Jesus	9960	9/28/2010	271750000380150	302198	796752(IA)	9/30/2008	\$7,500	\$0	\$0

School Name	BEN	Date of Request For Review	Form 470	Form 471	FRN	COMAD Date	Original Funding Commitment	Funds Disbursed to Date	Disbursed Funds USAC Claims Should be Recovered from Service Provider/Applicant
Sacred Heart Private School*	10621	9/28/2010	855470000379449	302200	796777(IC) 796781(IC) 796782(IA)	9/30/2008	\$14,196.60 \$1,449 \$13,500	\$14,196.60 \$1,449 \$9,720	\$14,196.60 \$1,449 \$9,720
Santa Maria	10620	9/28/2010	907820000379448	302201	796808(IC) 796810(IA)	9/30/2008	\$12,906 \$13,500	\$12,906 \$9,720	\$12,906 \$9,720
St. Aloysius	10092	9/28/2010	260670000379138	302203	797401(IC) 797404(IC) 797409(IA)	9/30/2008	\$47,449.80 \$3,150 \$15,120	\$47,449.80 \$3,150 \$15,120	\$47,449.80 \$3,150 \$15,120
St. Ann - Manhattan	10112	9/28/2010	160460000379168	302209	797470(IC) 797475(IA)	9/30/2008	\$20,989.80 \$13,500	\$20,989.80 \$9,720	\$20,989.80 \$9,720
St. Ann - Bronx	10678	9/28/2010	414270000379150	302206	797435(IA)	9/30/2008	\$7,500	\$5,400	\$5,400
St. Anselm	10472	9/29/2010	931510000379204	302212	797505(IC) 797508(IC) 797510(IA)	9/30/2008	\$34,650 \$2,124 \$13,500	\$34,650 \$2,124 \$9,720	\$34,650 \$2,124 \$9,720
St. Augustine	10499	9/29/2010	847780000379437	302215	797537(IC) 797540(IA)	9/30/2008	\$31,368.60 \$13,500	\$0 \$0	\$0 \$0
St. Brigid	9882	9/29/2010	670720000379438	302216	797566(IC) 797569(IA)	9/30/2008	\$15,870.60 \$13,500	\$15,870.60 \$9,720	\$15,870.60 \$9,720
St. Charles Borromeo	10145	9/29/2010	383820000379216	302219	797595(IC) 797606(IA)	9/30/2008	\$15,066 \$13,500	\$0 \$9,720	\$0 \$9,720
St. Columba*	9814	9/29/2010		302220	797642(IC) 797646(IA)	9/30/2008	\$32,886 \$9,720	\$0 \$0	\$0 \$0
St. Dominic	10615	9/29/2010	126520000379281	302221	797675(IC) 797678(IA) 797681(IA)	9/30/2008	\$114,493.50 \$13,500 \$18,846	\$114,493.50 \$9,720 \$0	\$114,493.50 \$9,720 \$0
St. Elizabeth School	10171	9/29/2010	459880000379287	302223	797702(IC) 797703(IC) 797706(IA)	9/30/2008	\$34,641.00 \$2,124.00 \$15,120.00	\$34,641.00 \$2,124.00 \$15,120.00	\$34,641.00 \$2,124.00 \$15,120.00
St. Francis of Assisi	10660	9/29/2010	261340000379296	302224	797730(IC) 797731(IA) 797736(IC)	9/30/2008	\$61,569 \$13,500 \$18,846	\$61,569 \$13,500 \$0	\$61,569 \$13,500 \$0
St. John's	10635	9/28/2010	607220000379305	302225	797768(IA)	9/30/2008	\$12,000	\$12,000	\$12,000

School Name	BEN	Date of Request For Review	Form 470	Form 471	FRN	COMAD Date	Original Funding Commitment	Funds Disbursed to Date	Disbursed Funds USAC Claims Should be Recovered from Service Provider/Applicant
Elementary									
St. Joseph of the Holy Family	10076	9/28/2010	976270000380164	302228	797816(IA) 797811(IC) 797815(IC)	9/30/2008	\$13,500 \$10,746 \$2,124	\$9,720 \$10,746 \$2,124	\$9,720 \$10,746 \$2,124
St. Joseph School - Bronx	10527	9/28/2010	414050000379447	302233	797848(IC) 797853(IC) 797857(IA)	9/30/2008	\$12,906 \$1,449 \$13,500	\$12,906 \$1,449 \$13,500	\$12,906 \$1,449 \$13,500
St. Joseph - Monroe	9848	9/28/2010	891680000379325	302231	797900(IC) 797908(IA) 797912(IC)	9/30/2008	\$29,241 \$13,500 \$18,846	\$29,241 \$9,720 \$0	\$29,241 \$9,720 \$0
St. Joseph - Yorkville	10273	9/28/2010	803230000379317	302230	797966(IA)	9/30/2008	\$12,000	\$8,640	\$8,640
St. Luke	10463	9/28/2010	712800000383242	301724	774680(IC) 774693(IA) 774709(IC)	10/1/2008	\$47,700 \$14,040 \$18,846	\$47,646 \$14,040 \$0	\$47,646 \$14,040 \$0
St. Mark the Evangelist	10228	9/28/2010	609800000379420	302234	798114(IC) 798118(IC) 798124(IA)	9/30/2008	\$16,686 \$2,124 \$13,500	\$16,686 \$2,124 \$13,500	\$16,686 \$2,124 \$13,500
St. Mary School	10668	9/28/2010	640190000379440	302237	798152(IC) 798156(IC) 798160(IA)	9/30/2008	\$21,762 \$2,124 \$13,500	\$17,550 \$2,124 \$9,720	\$17,550 \$2,124 \$9,720
St. Michael Academy	9812	9/28/2010	946890000379442	302239	798200(IC) 798205(IC) 798209(IA)	9/30/2008	\$28,116 \$2,124 \$13,500	\$28,116 \$2,124 \$9,720	\$28,116 \$2,124 \$9,720
St. Paul School	10216	9/28/2010	401440000379422	302240	798241(IC) 798243(IC) 798244(IA)	10/1/2008	\$16,092 \$2,124 \$13,500	\$16,092 \$2,124 \$9,720	\$16,092 \$2,124 \$9,720

*=School Closed

EXHIBIT 2

**Schools & Libraries Division**

Notification of Commitment Adjustment Letter
Funding Year 2002: 7/01/2002 - 6/30/2003

September 30, 2008

Ed Fener
ST ELIZABETH SCHOOL
612 W 187TH ST
NEW YORK, NY 10033 1315

Re: Form 471 Application Number: 302223
Funding Year: 2002
Applicant's Form Identifier: 200247110171
Billed Entity Number: 10171
FCC Registration Number: 0012029682
SPIN Name: Elite Systems, Inc.
Service Provider Contact Person: Jiin Kang

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the adjustments to your funding commitment required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of the Demand Payment Letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at <http://www.universalservice.org/fund-administration/tools/latest-news.aspx#083104> for more information regarding the consequences of not paying the debt in a timely manner.

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Numbers you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, Billed Entity Number, and FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter specific and brief, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal electronically, please send your appeal to appeals@sl.universalservice.org using your organization's e-mail. If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Dept. 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Appeals Area of the SLD section of the USAC web site or by contacting the Client Service Bureau at 1-888-203-8100. We strongly recommend that you use the electronic appeals options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. Immediately preceding the Report, you will find a guide that defines each line of the Report.

The SLD is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these Funding Request Numbers, a separate letter will be sent to the service provider detailing the necessary service provider action.

Please note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Please note the Funding Commitment Adjustment Explanation in the attached Report. It explains why the funding commitment is being reduced. Please ensure that any invoices that you or your service provider submit to USAC are consistent with program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Jiin Kang
Elite Systems, Inc.

A GUIDE TO THE FUNDING COMMITMENT ADJUSTMENT REPORT

A report for each E-rate funding request from your application for which a commitment adjustment is required is attached to this letter. We are providing the following definitions for the items in that report.

FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each individual request in your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on Form 471.

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: The legal name of the service provider.

CONTRACT NUMBER: The number of the contract between the applicant and the service provider. This will be present only if a contract number was provided on your Form 471.

BILLING ACCOUNT NUMBER: The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.

SITE IDENTIFIER: The Entity Number listed in Form 471, Block 5, Item 22a. This number will only be present for "site specific" FRNs.

ORIGINAL FUNDING COMMITMENT: This represents the original amount of funding that SLD had reserved to reimburse you for the approved discounts for this service for this funding year.

COMMITMENT ADJUSTMENT AMOUNT: This represents the amount of funding that SLD has rescinded because of program rule violations.

ADJUSTED FUNDING COMMITMENT: This represents the adjusted total amount of funding that SLD has reserved to reimburse for the approved discounts for this service for this funding year. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.

FUNDS DISBURSED TO DATE: This represents the total funds that have been paid to the identified service provider for this FRN as of the date of this letter.

FUNDS TO BE RECOVERED FROM APPLICANT: This represents the amount of improperly disbursed funds to date as a result of rule violation(s) for which the applicant has been determined to be responsible. These improperly disbursed funds will have to be recovered from the applicant.

FUNDING COMMITMENT ADJUSTMENT EXPLANATION: This entry provides an explanation of the reason the adjustment was made.

**Funding Commitment Adjustment Report for
Form 471 Application Number: 302223**

Funding Request Number:	797702
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143004742
Service Provider Name:	Elite Systems, Inc.
Contract Number:	ADStEliz
Billing Account Number:	ADStEliz
Site Identifier:	10171
Original Funding Commitment:	\$34,641.00
Commitment Adjustment Amount:	\$34,641.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$34,641.00
Funds to be Recovered from Applicant:	\$34,641.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the service provider Elite Systems, Inc. participated in the preparation of the Form 470 which established the competitive bidding process for FRN 797702 by drafting the content of the Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. Accordingly, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. By having the service provider engaged in the preparation and submission of its Form 470, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any funds disbursed in violation of the program's competitive bidding rules. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR
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Funding Request Number: 797703
Services Ordered: INTERNAL CONNECTIONS
SPIN: 143004742
Service Provider Name: Elite Systems, Inc.
Contract Number: ADSTEliz
Billing Account Number: ADStEliz
Site Identifier: 10171
Original Funding Commitment: \$2,124.00
Commitment Adjustment Amount: \$2,124.00
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$2,124.00
Funds to be Recovered from Applicant: \$2,124.00
Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the service provider Elite Systems, Inc. participated in the preparation of the Form 470 which established the competitive bidding process for FRN 797703 by drafting the content of the Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. Accordingly, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. By having the service provider engaged in the preparation and submission of its Form 470, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any funds disbursed in violation of the program's competitive bidding rules. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

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Funding Request Number:	797706
Services Ordered:	INTERNET ACCESS
SPIN:	143004742
Service Provider Name:	Elite Systems, Inc.
Contract Number:	ADStEliz
Billing Account Number:	ADStEliz
Site Identifier:	10171
Original Funding Commitment:	\$15,120.00
Commitment Adjustment Amount:	\$15,120.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$15,120.00
Funds to be Recovered from Applicant:	\$15,120.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the service provider Elite Systems, Inc. participated in the preparation of the Form 470 which established the competitive bidding process for FRN 797706 by drafting the content of the Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. Accordingly, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. By having the service provider engaged in the preparation and submission of its Form 470, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any funds disbursed in violation of the program's competitive bidding rules. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

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EXHIBIT 3

Administrator's Decision on Appeal – Funding Year 2002 - 2003

August 23, 2010

Paul C. Besozzi, Esquire
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037-1350

RE:	Applicant Name:	Saint Elizabeth School
	Billed Entity Number:	10171
	Form 471 Application No.:	302223
	Funding Request Number(s):	797702, 797703, 797706
	Your Correspondence Dated:	November 29, 2008

Dear Mr. Besozzi:

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Commitment Adjustment Letter ("COMAD") to Saint Elizabeth School and Elite Systems, Inc. ("Elite") for Funding Year 2002 for Application Number 302223. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 797702, 797703, 797706

Decision on Appeal: **Denied**

Explanation:

- On appeal, Saint Elizabeth School proffers several arguments as to why SLD erred in its decision to issue a COMAD and seek recovery of funds that have been improperly disbursed in Funding Year 2002. First, Saint Elizabeth School argues that the five-year administrative time limitation for issuing the COMAD has expired and thus, the COMAD must be rescinded. Specifically, Saint Elizabeth School argues that all services were delivered to Saint Elizabeth School by June 30, 2003 for Funding Year 2002 services and because the COMAD was dated September 30, 2008, the five-year administrative time limit had expired.

- SLD agrees that the FCC established a five-year administrative time period for completing investigations and audits in the *Schools & Libraries Fifth Report and Order*.¹ The FCC stated

[W]e will initiate and complete any inquiries to determine whether or not statutory or rule violations exist within a five year period after final delivery of service for a specific funding year . . . Under the policy we adopt today, USAC and the Commission shall carry out any audit or investigation that may lead to discovery of any violation of the statute or rule within five years of the final delivery date of service for a specific funding year. In the E-Rate context, disbursements often occur for a period up to two years beyond the funding year . . . For consistency, our policy for audits and other investigations mirrors the time that beneficiaries are required to retain documents pursuant to the rule adopted in this order. We believe that conducting inquiries within five years strikes an appropriate balance between preserving the Commission's fiduciary duty to protect the fund against waste, fraud, and abuse and the beneficiaries' need for certainty and closure in their E-Rate application process. *Id.* at ¶¶ 32-33.

The Commission further explained that this administrative five-year period was not the same as the five-year time frame established pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), in that this time frame was the "time period within which we must bring action to establish a debt due to violations of the E-Rate program rules or statutory provisions. In contrast, the DCIA statute limitations relates to the time period within which we must act to collect the debt once established." *Id.* at ¶ 32 n.55.

In the present matter, USAC determined that Elite and Saint Elizabeth School violated program rules for Funding Year 2002, when it concluded that Elite Systems, Inc. and Jiin Kang (a.k.a. Jiin Artis) improperly prepared and submitted Saint Elizabeth School's Form 470 for Funding Year 2002. In a June 7, 2006 response, Ms. Kang stated that "To the best of my recollection, in funding year ("FY") 2001 and 2002, I prepared the Form 470 applications for every school on Attachment A, except for Immaculate Conception School in 2001 and Sacred Heart in 2002."² USAC's Special Compliance Review ("SCR") team completed its investigation and issued its final report on March 10, 2008, concluding that Saint Elizabeth School and Elite violated program rules and the funding for Funding Year 2002 must be recovered. The *Fifth Report and Order*, does not require USAC to take actions to recover the improperly disbursed funds within this five-year administrative time period; it only has to conclude that there was a

¹ *In the Matter of Schools and Libraries Universal Support Mechanism*, Fifth Report and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, 15819, at ¶32 (2004) ("*Fifth Report & Order*").

² It should be noted that Saint Elizabeth School was one of the schools listed on Attachment A that Ms. Kang confirmed preparing the Form 470 for Funding Year 2002.

violation of E-Rate program rules and establish that a debt is owed within the time frame.

Further, according to USAC's records, the last date of service for FRN 797706 was June 30, 2003 and the last date of service for FRN's 797702 and 797703 was September 30, 2004 (an extension of time for delivery of services was provided for these FRN's). The Commission's *Fifth Report and Order* requires USAC to determine whether program violations occurred and that a debt is owed by June 30, 2008 for FRN 797706 and by September 30, 2009 for FRN 797702 and FRN 797703. As explained above, USAC issued its final SCR report and established that Saint Elizabeth School and Elite owed a debt due to their program violations on March 10, 2008 (which is within the five-year administrative timeframes for these FRNs). USAC complied with the requirements of the *Fifth Report and Order* and will not rescind the COMAD on this basis.

- Saint Elizabeth School next argues that USAC failed to provide documents or evidence to substantiate its conclusion that Elite participated in the competitive bidding process of Saint Elizabeth School for Funding Year 2002. Saint Elizabeth School asserts that this evidence is required to allow it to file "an informed appeal." (Saint Elizabeth School Appeal Br. at 5).
- USAC disagrees with the assertion that it did not provide enough evidence or documentation to allow Saint Elizabeth School to appeal the decision to rescind funding for Funding Year 2002. Counsel is aware of Ms. Kang's June 7, 2006 response to USAC's May 24, 2006 inquiry regarding her role in preparing Form 470s for applicants who selected her services in Funding Year 2002.³ In that June 6, 2006 response, Ms. Kang confirmed that:

I prepared the Form 470 applications for every school on Attachment A,⁴ except for the Immaculate Conception School in 2001 and Sacred Heart in 2002. At the time, most of the schools' administrators and staff lacked the technical knowledge and/or Internet access necessary to complete their Form 470s online. At the schools' request, I agreed to complete the online portions of their Form 470s after receiving completed paper copies of the forms from the schools.

Contrary to Ms. Kang's assertion that "there was no rule or Form 470 instruction in effect at the time that prohibited service providers from assisting schools to file Form 470s," such action was prohibited for applications filed for Funding Year 2002. USAC's training presentation for Funding Year 2002 clearly states that "[s]ervice providers may not fill out program forms for applicants that require

³ Counsel cited language from this response in its May 21, 2009 response to USAC's April 21, 2009 Letter of Inquiry.

⁴ As noted before, Saint Elizabeth School was one of the schools listed on Attachment A.

certification.”⁵ The 2001 training materials further state that “[t]he Form 470 must be completed by the entity that will negotiate with prospective bidders.” *Id.* at slide 27. As Saint Elizabeth School is aware, the Form 470 requires its certification, and thus, it may not be prepared by Elite. Also since Saint Elizabeth School is the party responsible for negotiating with prospective bidders, it is required to complete the Form 470. E-Rate program rules do not include any exceptions that would allow the service provider to prepare and submit the Form 470 on behalf of applicants. Contrary to Saint Elizabeth School’s argument, service providers are not allowed to provide “data entry” services to the applicant related to preparing the FCC Form 470, or any other program form that requires the applicant’s certification. As the FCC has held repeatedly, ignorance of program rules is not a defense to program violations.⁶ Further, each applicant must take responsibility for understanding the Commission’s rules when applying for discounts under the schools and libraries universal service support mechanism.⁷

It should further be noted that applicants were not required to file Form 470s online and were allowed to file paper copies of the Form 470 with USAC for Funding Year 2002. Thus, Ms. Kang’s explanation for why she prepared Saint Elizabeth School’s Form 470 for Funding Year 2002 does not excuse the action or the competitive bidding violation. The fact that USAC questioned Ms. Kang about her role and she confirmed that she prepared the Form 470 on behalf of Saint Elizabeth School is enough evidence for USAC to conclude that Elite and Saint Elizabeth School violated E-Rate program rules for Funding Year 2002.

- Saint Elizabeth School next argues that it complied with all aspects of the Commission’s competitive bidding rules. (Saint Elizabeth School Appeal Br. at 6.) Saint Elizabeth School explains that USAC posted its Form 470 on November 13, 2001. Saint Elizabeth School confirms that it sought Internet Access, internal connections, and network maintenance services. Saint Elizabeth School further confirms that it waited 64 days before selecting Elite as the low-cost provider. Saint Elizabeth School also states that it filed its Form 471 on January 16, 2002. Based upon these actions, Saint Elizabeth School concludes that it satisfied all of the Commission’s competitive bidding rules.

⁵ USAC, “Enforcement Review,” Train-the-Trainer Workshop, slide 30 (Sept. 17-18, 2001), *available at*, www.usac.org/sl/about/training-sessions/training-2001/2001-presentations.aspx.

⁶ *See, e.g., In re Application of Detroit Public Schools*, Mem. Op., File No. BRED-20040512AEL, 21 FCC Rcd 13688, 13691, DA 06-2344, ¶11 (rel. Nov. 27, 2006) (“[T]he Commission has repeatedly declared that ignorance of the law is not a defense or a mitigating circumstance to a violation.”) (footnote omitted).

⁷ *See In the Matter of Request for Review of the Decision by the Universal Service Administrator by Pearl River School District, Pearl River, New York*, CC Dockets 96-45, 97-21, 17 FCC Rcd 3538, 3542, DA 02-432, ¶ 10 (Feb. 26, 2002) (“[I]t is administratively necessary to place on the applicant the ultimate responsibility of complying with all relevant rules and procedures. An applicant’s misunderstanding of program rules provides no basis for deviating from the Commission’s policy of placing on the applicant the responsibility for understanding program rules and procedures.”) (footnotes omitted).

Saint Elizabeth School further asserts that the language in its Funding Year 2002 Form 470 was “vendor neutral” and that one service provider did not benefit over another. Saint Elizabeth School argues that because it used vendor neutral language that “[c]learly Elite could not have an unfair advantage or inside information regarding the provision of services described in such a generic manner.” (*Id.*)

- USAC does not agree that Saint Elizabeth School’s use of “vender neutral language” cured the competitive bidding violations. Specifically, Saint Elizabeth School makes no mention here of the fact that Ms. Kang of Elite prepared and submitted Saint Elizabeth School’s Form 470 for Funding Year 2002. As explained above, the fact that Ms. Kang prepared and submitted Saint Elizabeth School’s Form 470 is a clear violation of program rules and the fact that Saint Elizabeth School might have complied with other FCC competitive bidding rules does not cure this violation.
- Saint Elizabeth School also asserts that Saint Elizabeth School “did not abrogate its competitive bid responsibility. Elite did not influence or participate in Saint Elizabeth School’s competitive bid process.” (Saint Elizabeth School Appeal Br. at 7.) Saint Elizabeth School appears to be arguing that because Saint Elizabeth School signed and certified its FCC Form 470 and an Elite employee was not listed as a contact person on its Form 470, that it complied with all program rules, including the Commission’s directives in *MasterMind*.⁸
- SLD disagrees that Saint Elizabeth School did not abrogate its competitive bid responsibility. The fact that Saint Elizabeth School signed and certified its Form 470 and did not list an Elite employee as its contact person does not alter USAC’s finding that Ms. Kang prepared and submitted Saint Elizabeth School’s Form 470 for Funding Year 2002 in violation of program rules. In *Caldwell*, the Commission held that a service provider filling out and submitting the applicant’s Form 470 was a “clear violation of the prohibition against service providers filling out forms that require an applicant’s certification, as well as a violation of the mandate that the FCC Form 470 be completed by the entity that will negotiate with prospective bidders.”⁹

FCC rules require a fair and open competitive bidding process. Under the Commission’s rules, service providers may not participate in the bidding process other than as bidders because, as the Commission has ruled, “direct involvement in an application process by a service provider would thwart the competitive bidding process.”¹⁰ Communications between applicants and service providers

⁸ *In the Matter of Request for Review of Decision of the Universal Service Administrator by MasterMind Internet Services, Inc.*, CC Docket No. 96-45, 16 FCC Rcd 4028, FCC 00-167 (2000) (“*MasterMind*”).

⁹ *In the Matter of Requests for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al.*, Docket No. CC 02-6, 23 FCC Rcd 2784, 2791, ¶ 17(2008) (“*Caldwell*”).

¹⁰ *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al., Federal-State Joint Board on Universal Service, Changes to the Board of*

that unfairly influence the outcome of the competition, provide inside information, or allow the provider to unfairly compete taints the competitive process. USAC guidance provides in relevant part as follows:

The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means that there are no secrets in the process, such as information shared with one bidder but not with the others, and all bidders know what is required of them.

In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with the service provider prior to the competitive bidding that would unfairly influence the outcome of a completion or would furnish the service provider with "inside" information or allow it to unfairly compete in any way.¹¹

- In the present matter, it is clear that Elite had advance knowledge regarding Saint Elizabeth School's Form 470 because Ms. Kang prepared and submitted the Form 470 on behalf of Saint Elizabeth School. It is also clear that Saint Elizabeth School had a relationship with Elite prior to the competitive bidding process and had furnished Elite with "inside" information by allowing Ms. Kang to prepare and submit its Form 470 on its behalf. The Commission has explicitly stated that "[t]o ensure the competitive bidding process enables schools and libraries to chose the best and most efficient provider of services, applicants should not have a relationship with a service provider prior to the competitive bidding process that would unfairly influence the outcome."¹² As Saint Elizabeth School is aware, the filing of the Form 470 and posting by USAC initiates the competitive bidding process under FCC rules, and thus, by allowing Elite to prepare and submit its Form 470, it violated the Commission's rules.
- SLD has determined that program rule violations have occurred and as a result this appeal is denied in full. FCC rules require USAC to rescind funding commitments in all or part, and recover funds when USAC learns that funding commitments and/or

Directors of the National Exchange Carrier Association, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, 19 FCC Rcd 6858, ¶ 60 (2003). See also, *MasterMind*, 16 FCC Rcd at 4032-33, ¶ 10; *Request for Review of the Decision of the Universal Service Administrator by SEND Technologies LLC, Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 07-1270 (2007); *Request for Review of the Decision of the Universal Service Administrator by Caldwell Parish School District, et al., Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 08-449 (2008).

¹¹ See www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx.

¹² *In the Matter of Request for Review of a Decision of the Universal Service Administrator by Lazo Technologies, Inc., et al.*, CC Docket No. 02-6, 2009 WL 2477276, at *3, DA 09-1797, ¶ 10 (F.C.C. Aug. 12, 2009).

disbursements of funds were inconsistent with program rules.¹³ In particular, FCC rules require USAC to “recover the full amount disbursed for any funding requests in which the beneficiary failed to comply with the Commission’s competitive bidding requirements as set forth in section 54.504 and 54.511 of [FCC’s] rules and amplified in related Commission orders.”¹⁴ Moreover, FCC rules require “that all funds disbursed should be recovered for any funding request in which the beneficiary failed to pay its non-discounted share.”¹⁵

- SLD finds that both Saint Elizabeth School and Elite are responsible for these rule violations because Saint Elizabeth School was not able to conduct a fair and open competitive bidding process based on Elite’s preparation and submission of Saint Elizabeth School’s Funding Year 2002 FCC Form 470. FCC rules clearly prohibit service providers from preparing and submitting Form 470s on behalf of SLD applicants. FCC rules further require the entity that will negotiate with prospective bidders to be the one who completes the Form 470. The fact that Saint Elizabeth School and Elite may have complied with other FCC competitive bidding rules does not cure these violations.

For appeals that have been denied, partially approved, dismissed or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554. Further information and options for filing an appeal directly with the FCC can be found in the “Appeals Procedure” posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We also thank you for your continued support, patience and cooperation during this appeal process.

Schools and Libraries Division
Universal Service Administrative Company

¹³ See *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 99-291 (1999); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, FCC 00-350 (2000); *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Schools & Libraries Universal Service Support Mechanism, Order on Reconsideration and Fourth Report & Order*, CC Docket Nos. 96-45, 97-21, 02-6, 19 FCC Rcd 15252 (2004) (“*Schools & Libraries Fourth Report*”).

¹⁴ *Fifth Report and Order*, 19 FCC Rcd 15808, at ¶ 21.

¹⁵ *Id.* at ¶ 24.

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EXHIBIT 4

**Schools and Libraries Universal Service Program
Services Ordered and Certification Form 471
Application Display**

Block 1: Billed Entity Information

Applicant's Form Identifier:
200247110691

471 Application Number: 302191

Cert. Postmark Date: 01/15/2002

Out of Window Letter Date: Not applicable

Funding Year: 07/01/2002 -
06/30/2003

Form Status: CERTIFIED - In Window

Billed Entity Number:
10691

RAL Date: 02/04/2002

Name: IMMACULATE CONCEPTION G SCHOOL
Address: 760 E GUNHILL RD
City: BRONX **State:** NY **Zip:** 10467 6108

Contact Name: Fr. John LoSasso
Address: 760 E GUNHILL RD
City: BRONX **State:** NY **Zip:** 10467 6108

Type of Application: SCHOOL

Ineligible Orgs: N

Block 3: Impact of Services Ordered in THIS Application

Number of students to be served: 852

Number of library patrons to be served:

SERVICE DESCRIPTION	BEFORE ORDER	AFTER ORDER
f. Direct connections to the Internet: How many before and after your order?	1	1
g. Direct connections to the Internet: Highest speed before and after your order?	1.1 Mbps	1.5 Mbps
h. Internet access(for schools): How many rooms have Internet access before and after your order?	35	46
j. Internet Access: How many computers (or other devices) with Internet access before and after your order?	50	60

Block 4: Worksheets

Worksheet A No: 370707

Student Count: 878

Weighted Product (Sum. Column 8): 790.2

Shared Discount: N/A

1. School Name: IMMACULATE CONCEPTION G SCHOOL

2. Entity Number: 10691 3. Rural/Urban: Urban

4. Student Count: 878 5. NSLP Students: 852 6. NSLP Students/Students: 97.038%

7. Discount: 90%

8. Weighted Product: 790.2

Block 5: Discount Funding Request(s)

FRN: 796575 FCDL Date: 05/05/2003	
11. Category of Service: Telecommunications Service	12. 470 Application Number: 979820000379425
13. SPIN: 143001359	14. Service Provider Name: Verizon- New York Inc.
15. Contract Number: T	16. Billing Account Number: 7186533346
17. Allowable Contract Date: 12/11/2001	18. Contract Award Date:
19a. Service Start Date: 07/01/2002	19b. Service End Date: 06/30/2003
20. Contract Expiration Date:	
21. Attachment #: 1	22. Block 4 Entity Number: 10691
23a. Monthly Charges: \$500.00	23b. Ineligible monthly amt.: \$0.00
23c. Eligible monthly amt.: \$500.00	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$6,000.00	
23f. Annual non-recurring (one-time) charges: 0 23g. Ineligible non-recurring amt.: 0	
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00	
23i. Total program year pre-discount amount (23e + 23h): \$6,000.00	
23j. % discount (from Block 4): 90	
23k. Funding Commitment Request (23i x 23j): \$5,400.00	

FRN: 796577 FCDL Date: 05/05/2003	
11. Category of Service: Telecommunications Service	12. 470 Application Number: 979820000379425
13. SPIN: 143001192	14. Service Provider Name: AT&T Corp.
15. Contract Number: T	16. Billing Account Number: 7186533346
17. Allowable Contract Date: 12/11/2001	18. Contract Award Date:
19a. Service Start Date: 07/01/2002	19b. Service End Date: 06/30/2003
20. Contract Expiration Date:	
21. Attachment #: 2	22. Block 4 Entity Number: 10691
23a. Monthly Charges: \$50.00	23b. Ineligible monthly amt.: \$0.00
23c. Eligible monthly amt.: \$50.00	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$600.00	
23f. Annual non-recurring (one-time) charges: 0 23g. Ineligible non-recurring amt.: 0	

23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00
23i. Total program year pre-discount amount (23e + 23h): \$600.00
23j. % discount (from Block 4): 90
23k. Funding Commitment Request (23i x 23j): \$540.00

FRN: 796579 FCDL Date: 05/05/2003	
11. Category of Service: Telecommunications Service	12. 470 Application Number: 979820000379425
13. SPIN: 143025240	14. Service Provider Name: Cingular Wireless
15. Contract Number: T	16. Billing Account Number:
17. Allowable Contract Date: 12/11/2001	18. Contract Award Date:
19a. Service Start Date: 07/01/2002	19b. Service End Date: 06/30/2003
20. Contract Expiration Date:	
21. Attachment #: 3	22. Block 4 Entity Number: 10691
23a. Monthly Charges: \$300.00	23b. Ineligible monthly amt.: \$.00
23c. Eligible monthly amt.: \$300.00	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$3,600.00	
23f. Annual non-recurring (one-time) charges: 0	23g. Ineligible non-recurring amt.: 0
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00	
23i. Total program year pre-discount amount (23e + 23h): \$3,600.00	
23j. % discount (from Block 4): 90	
23k. Funding Commitment Request (23i x 23j): \$3,240.00	

FRN: 796580 FCDL Date: 05/05/2003	
11. Category of Service: Internal Connections	12. 470 Application Number: 979820000379425
13. SPIN: 143025657	14. Service Provider Name: Computer Technical Services, Inc.
15. Contract Number: ADImmCGH	16. Billing Account Number: ADImmCGH
17. Allowable Contract Date: 12/11/2001	18. Contract Award Date: 01/07/2002
19a. Service Start Date: 07/01/2002	19b. Service End Date:
20. Contract Expiration Date: 06/30/2003	
21. Attachment #: 4	22. Block 4 Entity Number: 10691
23a. Monthly Charges: \$.00	23b. Ineligible monthly amt.: \$.00
23c. Eligible monthly amt.: \$0.00	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$0.00	
23f. Annual non-recurring (one-time) charges: 43924	23g. Ineligible non-recurring amt.: 0
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$43,924.00	
23i. Total program year pre-discount amount (23e + 23h): \$43,924.00	
23j. % discount (from Block 4): 90	
23k. Funding Commitment Request (23i x 23j): \$39,531.60	

FRN: 796581 FCDL Date: 05/05/2003	
11. Category of Service: Internet Access	12. 470 Application Number: 979820000379425

13. SPIN: 143025657	14. Service Provider Name: Computer Technical Services, Inc.
15. Contract Number: ADImmCGH	16. Billing Account Number: ADImmCGH
17. Allowable Contract Date: 12/11/2001	18. Contract Award Date: 01/07/2002
19a. Service Start Date: 07/01/2002	19b. Service End Date:
20. Contract Expiration Date: 06/30/2003	
21. Attachment #: 4	22. Block 4 Entity Number: 10691
23a. Monthly Charges: \$1,250.00	23b. Ineligible monthly amt.: \$0.00
23c. Eligible monthly amt.: \$1,250.00	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$15,000.00	
23f. Annual non-recurring (one-time) charges: 0	23g. Ineligible non-recurring amt.: 0
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00	
23i. Total program year pre-discount amount (23e + 23h): \$15,000.00	
23j. % discount (from Block 4): 90	
23k. Funding Commitment Request (23i x 23j): \$13,500.00	

Block 6: Certifications and Signature

24a. Schools: Y
 24b. Libraries or Library Consortia: N
 26a. Individual Technology Plan: Y
 26b. Higher-Level Technology Plan(s): N
 26c. No Technology Plan Needed:
 27a. Approved Technology Plan(s): Y
 27b. State Approved Technology Plan: N
 27c. No Technology Plan Needed:

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